IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

68-0157 (9-06) - 3091078 - EI

ROBIN L HAGENOW
Claimant

ARTIS FURNITURE COMPANY
Employer

APPEAL NO: 10A–EUCU-00882-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/01/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Robin L. Hagenow (claimant) appealed a representative's September 10, 2010 decision (reference 05) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Artis Furniture Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 1, 2010. The claimant participated in the hearing. Pat Artis appeared on the employer's behalf and presented testimony from two other witnesses, Jay Artis and Janice Wieslander. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 24, 2009. She worked full-time as a designer and sales person. Her last day of work was August 9, 2010. The employer discharged her on that date. The reason asserted for the discharge was not properly accounting for fabric ordered for a client, as well as prior concerns regarding failing to qualify a customer as to whether another sales person had assisted the customer previously.

The employer had some verbal discussions prior to August 9 with the claimant regarding issues such as proper qualification of a customer, and had given the claimant a letter setting out some related expectations on June 2, but had not directly advised her that her job was in jeopardy. In July a client ordered some fabric for recovering a chair; there was excess fabric that technically still belonged to the client. The client picked up the chair on or about July 20, but did not initially take the excess fabric, as the client was considering ordering matching pillows. The client then determined to attempt to make the pillows herself, so the claimant, who was friends with the client, dropped off the excess fabric to the client on or by about July 23. The employer observed the fabric was missing on or about that same day, and inquired of the claimant. The claimant responded that the client had picked up the fabric with the chair. The employer knew

at that time that the client had not in fact picked up the fabric herself, and concluded that the claimant had taken the fabric herself to make pillows on her own to sell privately to the client, rather than go through the contractor used by the employer.

While the employer knew that the claimant had at least not been totally accurate in reporting what had happened to the fabric on or about July 23, and determined at that time that it would discharge her, a number of the employer's management were going to be out of the store on vacation between August 1 and August 9, and so it was decided to wait until their return to discharge the claimant. When the managers returned from vacation on August 9, they discharged the claimant.

While the claimant did ultimately make pillows from the fabric for the customer/friend, that arrangement was not made until after August 9; the client turned over the fabric for the claimant to make the pillows after that date.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her misreporting of what had happened with the client's remaining fabric. While the claimant's report was not 100 percent accurate, the distinction between the client picking up the fabric and the claimant dropping off the fabric to the client is not significant, and her misstatement of the exact manner of transference was therefore not substantial misconduct. The employer has not established that she in fact had arranged in advance of August 9 to privately sell her services to make the pillows in competition with the employer's service. Further, there is no current act of misconduct

as required to establish work-connected misconduct. 871 IAC 24.32(8); Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). The incident which triggered the employer's discharge discussion occurred and was known on or by July 23, more than two weeks prior to the employer's discharge of the claimant; inconvenience to the employer does not sway the conclusion that the conduct was therefore not current. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's September 10, 2010 decision (reference 05) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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